

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RACINE EDUCATION ASSOCIATION,

Complainant,

VS

UNIFIED SCHOOL DISTRICT NO. 1  
OF RACINE COUNTY, WISCONSIN.

Respondent.

Case XVIII  
No. 15996 MP-169  
Decision No. 11315-B

Appearances:

Perry & First, Attorneys at Law, by Mr. Richard Perry appearing on behalf of the Complainant.

Mr. W. Thatcher Peterson, Coordinator of Employee Services appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

A complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission, in the above entitled matter, and the Commission having appointed George R. Fleischli, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07 (5) of the Wisconsin Statutes, and a hearing on said complaint having been held at Racine, Wisconsin, on February 23, 1973 before the Examiner, and the Examiner having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Complainant, Racine Education Association, hereinafter referred to as the Complainant, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes and the certified representative of all regular full-time and regular part-time certificated teaching personnel employed by the Unified School District No. 1 of Racine County, Wisconsin but excluding on-call substitute teachers, interns, supervisors, administrators and all other employees for purposes of collective bargaining on wages, hours and working conditions.

2. That Unified School District No. 1 of Racine County, Wisconsin, hereinafter referred to as the Respondent, is a public school district organized under the laws of Wisconsin and a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes;

3. That on February 14, 1972, at a regularly scheduled meeting, the Respondent's Board of Education received a report from its Negotiating Committee which was unanimously accepted and is reflected in the official minutes of said meeting which read in pertinent part as follows:

"NEGOTIATING COMMITTEE REPORT"

January 31, 1972

No. 11315-B

Your Committee discussed negotiations with Local 152.

The Committee also discussed the reasons that negotiations drag on for such a long time. It has been the Committee's experience that much progress is made the closer the parties are to a meaningful deadline. Consequently, in hopes that it will create a meaningful deadline and thus speed up the negotiations process with the various bargaining units, your Committee recommends that:

1. effective with the next round of negotiations with the Racine Education Association, the Racine Educational Secretaries Association, the Racine Educational Aides Association, and Service Employees International Union, Local 152, the School Board not make settlements retroactive, unless a tentative agreement is reached before the existing labor agreement expires.
2. effective with the next round of negotiations with the painters, carpenters, and plasterer, the School Board not make any settlement retroactive unless a tentative agreement is reached within one month after the existing labor agreement expires.

Respectfully submitted,

Arden L. Borgen, Chairman  
Jeannine Jenkins  
Lowell F. McNeill

NEGOTIATING COMMITTEE

Absent: Hunt  
Also present: Peterson

"On motion of Mr. Borgen and second by Mrs. Jenkins, it was unanimously passed that this report be accepted."

4. That on or about May 5, 1972, representatives of the Complainant and Respondent began negotiations for certain changes in wages, hours and working conditions to be included in a new collective bargaining agreement to replace the existing collective bargaining agreement which was due to expire on August 25, 1972; that the existing collective bargaining agreement contained a provision which, *inter alia*, provided elementary teachers with 100 minutes of planning time and read in relevant part as follows:

#### VIII. STAFF UTILIZATION AND WORKING CONDITIONS

c. Elementary school principals working with their teaching staff shall have the option of organizing their school day in an attempt to incorporate some flexibility which could provide time for preparation and planning as long as this can be done without decreasing instructional time.

d. The principal working with the teaching staff shall determine the time during which elementary school teachers shall have 100 minutes of planning time per week.

out of negotiations, the complainant alleged that the Respondent's proposed budget for the 1972-73 school year contained a provision which would have an adverse effect on implementing the elementary planning time provision in the 1972-73 school year; that on June 12, 1972, at a regularly scheduled meeting, the Respondent's Board of Education received a recommendation from its Committee-of-the-Whole dealing with the elimination of certain busing operations which was approved on a voice vote and is reflected in the official minutes of said meeting which read in relevant part as follows:

"COMMITTEE-OF-THE-WHOLE REPORT"

June 12, 1972.

Your Committee Recommends:

2. that, for the 1972-73 school year, busing in the Unified School District be limited to that over two miles, and further, that all savings so realized be put into a special fund for building purposes including new buildings, remodeling, and additions to existing facilities. Also, crossing guard costs revert back to each of the municipalities.

Prior to taking action on Item No. 2 and 3, the Committee agreed to the following items:

- that no Board action be taken at the June 5 meeting until after citizens have had an opportunity to speak, and that this citizen discussion period end at 11:00 p.m.
- that the earlier action to end the citizen comment period at 11:00 p.m. be reconsidered with the provision that each organization be limited to five minutes speaking time.

Sandra Bachmann.

Fratt PTA - Reported on PTA feeling and results of survey.

Respectfully submitted,

Arden L. Borgen, Chairman  
Paul T. Bishop  
James Dickert  
James F. Gilmore  
Lawrence E. Hunt  
Jeannine Jenkins  
Lowell F. McNeill  
LeRoy H. Seymour  
Bernice M. Thomsen

"COMMITTEE-OF-THE-WHOLE"

Also present:  
Berthelsen, Hay, Olley

Mr. Borgen moved, Mr. McNeill seconded, that Item No. 2 be approved.

Mr. Dickey moved, Mr. Gilmore seconded, to amend the motion to read "which is required by state statute" in place of "over two miles".

Mr. Dickey moved for a substitute motion that the Board direct the administrative staff to issue a directive whereby the Board studies the feasibility of contracting with the municipalities and bill the townships for the services we perform. This motion was ruled out of order.

The amendment to the motion failed on a voice vote.

Mr. Seymour moved, Mrs. Thomsen seconded, to amend the motion to read "which is required by state statute" in place of "over two miles".

Amendment failed on voice vote.

The original motion on Item No. 2 carried on a voice vote.

That thereafter, in negotiations on June 14, 1972, the Respondent's representatives proposed that the provision providing for 100 minutes of planning time for elementary teachers be eliminated from the collective bargaining agreement.

5. That the representatives of the Complainant and Respondent met in further negotiations and at a negotiation meeting on June 19, 1972, the parties agreed to jointly request mediation; that on June 20, 1972, the Respondent's representative sent a letter to the Wisconsin Employment Relations Commission requesting the appointment of a mediator which read in relevant part as follows:

Negotiations between Unified School District No. 1 of Racine County and the Racine Education Association have reached impasse. We have been unable to reach agreement on the terms of a new contract to replace the one that expires on August 25, 1972.

We jointly request that the WERC provide us with a mediator to help us reach a settlement.

6. That on and before July 10, 1972, the Complainant and Respondent had an agreement dealing with the question of whether negotiation meetings should be open to the public which was contained in their existing collective bargaining agreement and read in relevant part as follows:

#### "II" PROFESSIONAL NEGOTIATIONS

5.a. In order to facilitate negotiations between the Board of Education and the Racine Education Association, discussion sessions between representatives of the Board of Education and the Racine Education Association will be held in private unless open meetings are mutually agreed upon. This does not preclude keeping Association membership, Board members, and administrative staff informed as to progress of negotiations.

b. During negotiations, the chairman of the Negotiating Committee of the Board of Education and the Chairman of the Conference Committee of the Racine Education Association will issue joint press releases periodically.

c. If an impasse is reached, either party will have the right to openly state its position.

That on July 10, 1972, at a regular meeting of the Respondent's Board of Education, a resolution was introduced by Lowell F. McNeill, one of its members who is also head of its Negotiating Committee, which was referred to the Negotiating Committee for its recommendation as reflected in the official minutes of said meeting which read in relevant part as follows:

"Mr. McNeill read the following statement:

'It is unfortunate that every citizen does not have the opportunity to sit on boards such as this and have the responsibility of spending the taxpayer's money in a constructive fashion. The taxpayers and citizens of Racine are becoming vehemently partisan on issues that will materially affect our school system.'

'The issues of good education and the responsibilities of the Board of Education are being confused with the issue of busing.'

'The background of court decisions, racial problems and equal educational opportunities become more and more difficult to place in a proper framework as people become active on the issues on an over-simplified basis.'

'This Board member views the Board of Education's problems as one of making the existing educational facilities in Racine the most productive possible within the legal responsibilities of the Board.'

'I believe, therefore, that this Board should, in every way possible, attempt to make all citizens and taxpayers aware. The LaCrosse school district has made such a step and the Racine Journal-Times editorially took the position that I propose.'

#### R E S O L U T I O N

I move that the 1972 negotiations between the Racine Unified School District No. 1 and all organized bargaining units be conducted in the presence of authorized members of the press. Matters of controversy, such as hours of work, wages, fringe benefits and conditions of work, should be reduced to standards and statistics that can be compared to community standards. In this forum the public will be given a clear understanding of the issues and school costs that directly affect their pocketbook.

Mr. McNeill moved, Mr. Hay seconded, that the resolution be adopted.

Mr. Gilmore moved, Mr. Dickert seconded, that this resolution be referred to the Negotiating Committee and to report back to the Board. Motion carried on voice vote.

2. The representatives are expected - but not required - to stay for the entire session.
3. The representatives will not be permitted to attend each party's caucuses.

Everyone must recognize that the legitimate interest of the news media is being present at negotiations may conflict with the parties' legitimate interest in maintaining the integrity of the collective bargaining process. In the event this happens, then the Committee believes it is wisest to give priority to the bargaining process. But we should try to balance the two interests.

Respectfully submitted -

Lowell F. McNeill, Chairman  
Harold A. Hay  
Sr. Michelle Olley

NEGOTIATING COMMITTEE

Absent: Hunt  
Also present: Peterson

Mr. McNeill moved, Mr. Hay seconded, that this report be adopted.

Mr. Dickert moved, Mr. Berthelsen seconded, to amend the motion to include all those bargaining units that the School District negotiates with. Vote was unanimously in favor of the amendment.

Vote on the amended motion was: Ayes - Berthelsen, Dickert, Hay, McNeill, Olley - 5. Noes - Bishop, Gilmore - 2.

That subsequently on or before the collective bargaining agreement expired on August 25, 1972 the Complainant's representatives walked out of a negotiation meeting because representatives of the press were present.

7. That the parties met in negotiations on August 24, 1972 and exchanged "final offers" but failed to reach agreement and the collective bargaining agreement then existing between Complainant and Respondent expired by its own terms on August 25, 1972; that the parties scheduled another negotiation meeting for August 28, 1972 before breaking off discussions at the meeting of August 24 - 25, 1972; that thereafter on August 28, 1972 at a special meeting called for that purpose immediately before the scheduled negotiation meeting the Respondent's Board of Education considered and adopted a resolution dealing with wages, hours and working conditions of the employees represented by the Complainant which is reflected in the official minutes of said meeting which read in relevant part as follows:

"UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY

OFFICIAL PROCEEDINGS

PAUL T. BISHOP, President

LAWRENCE E. HUNT

Racine, Wisconsin

August 28, 1972

A special meeting of the Unified School District No. 1 of Racine County Board of Education was called to order at 5:10 P.M.

No. 11-15

On motion of Rev. Hunt and second by Mr. Barthelsen, it was unanimously passed that the Negotiating Committee be charged with the responsibility of discussing the whole subject of how we can best make the community aware of the issues and problems the Board faces in negotiating, and report this back to the Board.

That on August 14, 1972, at a regular meeting, the Respondent's Board of Education received and adopted a report from its Negotiating Committee which is reflected in the official minutes of said meeting which read irrelevant part as follows:

"NEGOTIATING COMMITTEE REPORT"

August 10, 1972

1. Your Committee discussed negotiations with the Racine Educational Secretaries' Association and the Racine Education Association.
2. At its meeting on July 10, 1972, the School Board referred to the Negotiating Committee a resolution by Mr. McNeill that would permit representatives from the news media to attend negotiating sessions. Your Committee considered it.

Collective bargaining is an adversary process. It requires some give and take. Compromises are always reached. Compromises are reached because an employer and the unions it deals with are married to each other; divorce does not exist. (Although some employers are forced to abandon a union by closing down and either going out of business or going elsewhere.)

In order for parties to bargain effectively, they must be able to talk to each other candidly and honestly. To the extent that public negotiations would hinder open communications, it interferes with collective bargaining. To the extent a party feels it must play or pander to the public, public negotiations hinder collective bargaining. To the extent the news media does not accurately report the negotiations, the misleading impression it would create hinders collective bargaining. We do not mean to imply that the news media is dishonest. Rather, we must recognize that people see negotiations, and everything else, from their own perspective. What may seem significant to a reporter may be in fact totally insignificant to the negotiators. Moreover, some bargaining sessions last 15 hours. In the space or time available, can a reporter accurately reflect the hours and hours of work that go into a negotiating session?

So far, your Committee has expressed serious reservations about public negotiations. They might prove true in practice, or they might not. Experience provides the test! We are willing to give it a try.

Therefore, your Committee recommends that the School District offer to the Racine Education Association and other bargaining units that contract negotiations for 1972-73 Professional Agreements be opened to the press, subject to these conditions:

1. One representative from the Racine Journal-Times, the Racine Labor, the Racine Star, Shoreline Leader, radio stations WRJN, WRAC, and WPNY will be permitted to attend the bargaining sessions.

Monday, August 28, 1972, with the following members present: Paul J. Bishop, James D. Dickert, James E. Gilmore, Harold A. Hay, Lowell F. McNeill, Sr., Michelle Olley - Absent W. Gilbert J. Berthelsen, Rev. Lawrence E. Hunt - 2.

Also present were C. Richard Nelson, superintendent of schools; Sam J. Castagna, assistant superintendent, administrative services; W. Thatcher Peterson, coordinator of employee services.

The Board met to determine Board policy relative to the fact that the contractual agreement between the Board of Education and the Racine Education Association expired at midnight on August 24, 1972.

Mr. Dickert moved, Sr. Michelle Olley seconded, that the following resolution be adopted:

RESOLUTION

WHEREAS, the 1971-72 Professional Agreement between Unified School District No. 1 of Racine County and the Racine Education Association by its terms expired on August 25, 1972; and,

WHEREAS, the School District and the REA have reached impasse in their negotiations over a 1972-73 Professional Agreement and have been unable to reach an agreement for one; and,

WHEREAS, in the absence of a labor agreement, it is necessary to provide personnel procedures;

NOW, THEREFORE, BE IT RESOLVED that:

1. Teachers shall be in their room or assigned places at least fifteen minutes before and after the time for the tardy signal. Teachers shall be present and performing their teaching duties during the time that pupils are required to be at school.
2. A teacher who is assigned an additional class on a full-time basis shall be compensated at the rate of 1/5 his regular salary.
3. Teachers shall, unless excused by the person calling the meeting, attend the following meetings:
  - a. Building staff meetings
  - b. Subject area meetings called by the consultant
  - c. Special meetings called by a department head, unit or team leader, area coordinator or principal
4. Reimbursements shall be made to itinerant professionals traveling between one school and another during the school day at the rate of 10¢ per mile.
5. The work year for classroom teachers shall commence on August 28, 1972. All teachers shall report to their assignment on August 28 and 29, 1972, for teacher and student orientation. Classes for all students shall begin on August 30, 1972. Labor Day will be observed as an unpaid holiday.
6. Teachers shall be paid according to the salary listed in their individual teacher's contract.
7. The salary to which a teacher is entitled under his individual contract will be paid in either 21 or 26 equal installments. A teacher who does not notify the Payroll Department of his choice of payments on the form the Payroll Department sends out will automatically receive his salary in 26 equal installments.

8. Teachers who satisfactorily perform assigned extra-duty responsibilities which are in addition to their regular classroom duties and regularly assigned extracurricular work will be paid additional compensation above the basic salary schedule as set forth in the schedule "Compensable Extra-duty Responsibilities," which is to be found in the expired 1971-72 Professional Agreement, pages 26, 27, 28, and which is hereby incorporated by reference into this Resolution.

9. Deductions from a teacher's salary because of absence not allowable shall be the yearly salary divided by 180 for each day absent.

10. The Board shall provide each teacher (except where both spouses are teachers, only one will be eligible) an opportunity to participate in a group hospitalization and surgical-medical benefit plan with the premium cost being paid by the Board, and with all benefits thereunder accruing as of September 1. Out-patient diagnostic hospital services shall include benefits up to \$200.00 for each yearly period.

11. Any teacher on a leave of absence will be eligible to participate in the group hospitalization and surgical-medical benefit plan provided he pays the full premium cost.

12. The Wisconsin State Life Insurance Group Plan is available to teachers. The Board shall add an amount equal to 32% of teacher contributions toward this plan. (The amount of life insurance received under this plan is the next thousand dollars higher than the previous calendar year earnings. Employees under 30 contribute 20 cents per \$1,000 monthly, employees under 40 contribute 40 cents per \$1,000 monthly, while employees over 40 contribute 60 cents per \$1,000 each month. Teachers are automatically included in this plan after six months employment unless they sign a waiver requesting noncoverage. Reinstatement, once a waiver is signed, is available to those under 50 years of age on request to the insurance company and subject to approval by the company.)

13. All teachers shall be included in one of the three available State Teachers Retirement Programs.

14. The Board shall pay to the Wisconsin Retirement Fund, in lieu of or as part of State Teachers Retirement System, the contributions required by the statutes to be deducted from the earnings of each participant an amount equal to 4 1/2% of each participant's salary schedule earnings, including extra-duty compensation, earned after August 25, 1972, all based on the following conditions:

a. That for the purpose of said statutes, said payment by the Board shall be considered to have been made by the said participating members; and

b. That said payments by Board shall not be considered as additional monthly compensation in computing the amount of the pension payable under the statutes.

Further, all such payments of contributions by the Board shall be reported to the State Teachers Retirement System in the same manner as though deducted from the earnings of participating employees, and all such payments of contributions made by the Board shall be available for all retirement fund benefit purposes to the same extent as normal contributions which were deducted from the

earnings of participating employees, the Board understands that contributions made by the Board shall not be considered deductible contributions.

15. The Policy shall make available payable deductions for tax-sheltered annuities. In addition to the normal contribution to the state teacher retirement system, a teacher may, in lieu of compensation, have a tax sheltered annuity purchased by the Unified District with the provision that the amounts paid for this annuity be completely nontaxable, the annuity itself being fully taxable upon receipt.

16. Each regular, full-time teacher will be allowed ten days of sick leave each school year without loss of pay if he is absent due to personal illness. Part-time teachers and teachers who have individual contracts of less than a full year will be allowed the sick leave benefit on a pro-rated basis. A teacher under a summer school contract will be allowed two summer school days sick leave which shall not be accumulated or deducted from regular sick leave.

17. The ten days of sick leave will be credited at the beginning of each school year. Any unused sick leave credit may be accumulated up to a maximum of 130 days for each teacher.

18. With the exception of the first ten days of accumulated sick leave, a teacher requesting approval of the use of accumulated sick leave shall have a form completed by his licensed physician indicating the nature of his illness, and shall forward such form to the superintendent. Upon receipt of the form the superintendent will present the request of this use of accumulated sick leave to the Board.

19. Upon beginning employment with the Board, a teacher previously employed by a school district as a full-time certified teacher shall receive as accumulated sick leave days 70 per cent of this total: 10 times (the teacher's step placement on the salary schedule); except that a teacher shall not receive more than the maximum number of accumulated sick leave days allowed under item 17.

20. A teacher absent as a result of being injured while at work may supplement Workmen's Compensation (sic) by taking accumulated sick leave in fractions (to the nearest tenth) of days. A maximum of up to ten days sick leave credit in any one school year will be reinstated to offset sick leave taken for the purpose of supplementing Workmen's Compensation during that year.

21. A physical examination is required of all teachers. Continuation of employment depends on a physical condition possible for teaching as determined by such examination. Re-examinations for teachers are required every third year. Failure to take an examination within the specified time may result in non-renewal of the individual contract.

22. The superintendent will supply teachers with a list of approved local doctors. A teacher must choose a doctor on the approved list. The examination fee will be paid by the Board.

23. When conditions warrant, the examining physician will indicate to the Board's medical consultant the need for further examination by specialists in the various fields of medicine or the need for special diagnostic tests or aids. Special examinations are paid for by the Board only when the employee is directed by the Board's medical consultant to have further examinations or re-examin-

actions by choice physicians. When such occasion arises, the superintendent will direct the employee to the proper specialists upon the recommendation of the medical consultant.

14. Leaves of absence without loss of pay will be granted as follows:

- a. A total of five days will be allowed, when requested, for each death in the immediate family. This five-day leave may not extend beyond two calendar days after the funeral. The immediate family is defined as father, mother, sister, brother, husband, wife, son, daughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandson, granddaughter, and any other person to whom the teacher stood in the mutually acknowledged relation of parent or child.
  - b. A total, not to exceed five days in any one school year, may be allowed for absence due to the illness of members of the immediate family when the illness is critical and requires the immediate presence of the teacher. Such absence is not allowed to take care of a patient, but allowed only when the illness of a relative is considered at a crisis stage requiring the attendance of the teacher. A doctor's statement may be requested to establish eligibility.
  - c. A male teacher may be absent no more than one day to attend the delivery or adoption of his child.
  - d. Under extreme circumstances, emergency leave of not more than three consecutive days may be granted a teacher at the sole discretion of the superintendent upon written application by the teacher forwarded to the superintendent via the teacher's principal or supervisor. The written application shall include details of the extreme circumstances which made the absence unavoidable.
- A teacher is entitled to no more than one day of personal leave without loss of compensation for items of business that cannot be conducted outside of school hours. Such business does not, for example, include entertainment or job interviews. To apply for personal leave a teacher shall:

1. Give at least three school days notice to his building principal and, concurrently,
2. Submit to the superintendent of schools (a) a statement setting forth the purpose of the personal leave, and (b) the reason it cannot be conducted outside of school hours.

Noes - 0.      Vote on the motion to accept the resolution: Ayes - 6.

On motion of Sister Olley and seconded by Mr. Dickett, it was unanimously passed that in case of a strike, the Board give authority to the superintendent to decide, on an individual or collective basis,

considering the current data, to make the decision regarding the question of keeping schools open and that same day, the Board met for an emergency session to decide further action.

On motion of Mr. Gilmore and second by Mr. Dickart, it was unanimously passed that the meeting be adjourned subject to recall. Meeting adjourned at 5:50 p.m.

Signed:

Lawrence P. Hunt, Clerk

Signed:

C. Richard Nelson, Secretary

8. That the Complainant expressed its concern that the action taken by the Respondent's School Board at its special meeting on August 28, 1972 constituted a prohibited practice and sent the Respondent's representatives a letter on August 29, 1972 which read in relevant part as follows:

"The Racine Education Association takes issue in two areas with the Board of Education resolution of Aug 28 1972. We strongly feel that these problems could rupture gains made at the bargaining table last evening the two items, the absence of a grievance procedure which either forces teachers into court or out in the street to solve their problems and the absence of planning time programs won during last years bargaining sessions and implemented during 71-72 school year. It would be tragic if teachers were forced to strike over this type of unilateral action by the Board. REA requests that the Board reconsider their action rectifying the situation in these two areas so that we can proceed in good faith in our attempt to reach a negotiated contract for the 72-73 school year."

That, thereafter, on September 1, 1972 and in response to said letter the Respondent's Superintendent unilaterally established the following grievance procedure which was adopted at a regular school board meeting held on September 11, 1972.

Office of the Superintendent of Schools  
Unified School District No. 1 of Racine County  
Racine, Wisconsin

1 September 1972

To: All Professional Staff  
From: C. Richard Nelson, Superintendent of Schools  
Subject: Grievance Procedure

The REA has asked the School Board to adopt a grievance procedure, since the Resolution it adopted on August 28, 1972, did not contain one. I think the concern is legitimate. Consequently, by this administrative directive, I am creating a grievance procedure.

#### GRIEVANCE PROCEDURE

1. A grievance is a claim which alleges that one or more provisions of the Board Resolution of August 28, 1972, has been incorrectly interpreted and applied. Such claim must be based on an event or condition which affects wages, hours and/or conditions of employment of one or more teachers.

The purpose of this procedure is to secure equitable and just solutions to the problems which from time to time arise affecting the welfare or working conditions of teachers.

Grievances of teachers will be considered and processed in the following manner:

Level One

a. A teacher who believes he has cause for a grievance will orally discuss the matter with his principal or supervisor with the objective of resolving the matter informally at the lowest possible administrative level. If there is a failure to resolve the matter informally, the aggrieved teacher may present his grievance in writing to his principal or supervisor, either directly or through the Association's designated representative.

b. The Association's designated representative may submit in writing directly to the building principal a grievance affecting a group or class of teachers in that school.

c. If a teacher or the Association's designated representative does not present a grievance in writing to his principal or supervisor within twenty (20) school days after the event or condition occurred on which the complaint is based, any grievance respective to that matter shall be considered as waived provided the teacher or designated representative knew, or should have known, of the event or condition.

Level Two

a. If no satisfactory decision has been rendered within ten (10) school days after the teacher presented the written grievance in Level One, the aggrieved teacher may within five (5) school days thereafter file a written grievance with the Association's designated representative.

b. Within five (5) school days after receiving the written grievance, the Association's designee will refer it to the Superintendent of Schools or his designee (hereinafter in this article, where the title Superintendent of Schools appears, designee may be substituted therefor).

c. Within ten (10) school days after receipt of the written grievance by the Superintendent, he will meet with the aggrieved teacher and not more than two Association representatives to resolve the grievance.

Level Three

a. If no satisfactory decision has been rendered by the Superintendent within fifteen (15) school days after the first meeting with the teacher, the aggrieved teacher may, within five (5) school days thereafter, file a written grievance with the Association's designee.

b. Within five (5) school days after receiving the written grievance, the Association may refer it to the Board or a designated sub-committee of Board members (hereinafter in this article where the title Board appears, sub-committee may be substituted therefor). If the Association determines that the grievance is meritorious,

c. Within ten (10) school days after receiving the written grievance, the Board will meet with the aggrieved teacher and the

the Association representative for the purpose of resolving the grievance.

9. That the decision of the Board shall be final.

10. That the resolution of the Respondent's School Board, adopted at its special meeting on August 28, 1972, established wages, hours and working conditions for employes represented by the Complainant which were generally consistent with the wages, hours and working conditions contained in the collective bargaining agreement which expired on August 25, 1972 but that numerous working conditions, contained in said collective bargaining agreement which were not in issue in the negotiations, were not included in said resolution.

11. That the resolution of the Respondent's School Board, adopted at its September 11, 1972 meeting, established a grievance procedure that was different than the grievance procedure contained in the collective bargaining agreement which expired on August 25, 1972 in at least two material respects, to wit: it more narrowly defined the type of claims that could be grieved and it did not provide for binding arbitration.

12. That subsequently, on or about November 13, 1972, the Complainant and Respondent entered into a new collective bargaining agreement which was retroactive in its application to July 25, 1972, and contained the same grievance procedure and planning time provision as was contained in the prior collective bargaining agreement and included all those working conditions which were contained in the prior collective bargaining agreement but were omitted from the resolution adopted by the Respondent's Board of Education on September 11, 1972.

Based on the above and foregoing Findings of Fact the Examiner makes and enters the following:

#### CONCLUSIONS OF LAW

1. That, by accepting on February 14, 1972 the recommendation contained in the report of its Negotiating Committee that the Respondent committed itself to the position that any settlement reached after the expiration of the collective bargaining agreement then existing between the Complainant and Respondent, would not be made retroactive the Respondent's Board of Education did not refuse to bargain collectively as that term is defined in Section 111.70(1)(d) of the Wisconsin Statutes, and therefore the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Wisconsin Statutes.

2. That, by approving on June 12, 1972 the recommendation of its Committee-of-the-Whole report that busing be limited to that over 2 miles, the Respondent's Board of Education did not refuse to bargain collectively as that term is defined in Section 111.70(1)(d) of the Wisconsin Statutes and therefore the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Wisconsin Statutes.

3. That, by adopting on August 14, 1972 the report of its Negotiating Committee that an offer be made to the Complainant to open the joint portion of the negotiations to certain members of the news media, the Respondent's Board of Education did not refuse to bargain collectively as that term is defined in Section 111.70(1)(d) of the Wisconsin Statutes and therefore the Respondent did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4 of the Wisconsin Statutes.

4. That, by unilaterally establishing a new grievance procedure which inter alia more narrowly defined those claims which could be grieved under

...and/or to change and/or eliminate such provision providing for minimum wages, hours or working conditions or threatening to do so without first offering to bargain and, if requested, bargaining in good faith with appropriate representatives of the Racine Education Association with regard to any such proposed establishment, modification or elimination of wages, hours or working conditions.

...What to the extent the Respondent's Board of Education intended to unilaterally change or eliminate and did unilaterally change or eliminate any other working conditions established in the collective bargaining agreement which expired on August 25, 1972 which were not in issue in the negotiations by its action of adopting the resolution set out above at its special meeting on August 28, 1972 it failed and refused to bargain collectively with regard to mandatory subjects of bargaining within the meaning of Section 111.70(1)(d) of the Wisconsin Statutes and committed a prohibited practice within the meaning of Section 111.70(3)(a)4 and Section 111.70(3)(a)1 of the Wisconsin Statutes.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and enters the following:

ORDER

It is ordered that Unified School District No. 1 of Racine County, its officers and agents shall immediately:

1. Cease and desist from refusing to bargain collectively with regard to mandatory subjects of bargaining within the meaning of Section 111.70(1)(d) of the Wisconsin Statutes by unilaterally establishing, modifying or eliminating wages, hours or working conditions or threatening to do so without first offering to bargain and, if requested, bargaining in good faith with appropriate representatives of the Racine Education Association with regard to any such proposed establishment, modification or elimination of wages, hours or working conditions.

2. Immediately take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

a. Notify all of its employes represented by the Racine Education Association by posting in conspicuous places where notices to all such employes are usually posted copies of the notice attached hereto and marked "Appendix A". Such copies shall be signed by the President of its Board of Education and such other officers of the Board of Education who normally sign official communications and shall remain posted throughout the negotiations for the next succeeding collective bargaining agreement. Reasonable steps shall be taken to insure that said notices are not covered, removed or defaced in any manner.

b. Notify the Commission, in writing, within twenty (20) days of the date of this Order what steps it has taken to comply with this Order.

Dated at Madison, Wisconsin this 94 day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *George R. Fleischman*  
George R. Fleischman, Examiner

No. 1111-1

APPENDIX A  
NOTICED BY THE TEACHING PERSONNEL  
REPRESENTED BY THE RACINE EDUCATION ASSOCIATION

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with the Racine Education Association by unilaterally establishing, modifying or eliminating wages, hours or working conditions without first offering to bargain and, if requested, bargaining in good faith with the appropriate representatives of the Racine Education Association with regard to the proposed establishment, modification or elimination of wages, hours or working conditions.

BOARD OF EDUCATION, UNITED SCHOOL DISTRICT NO. 1  
OF RACINE COUNTY

By President

Dated: 1/18/73 day of 1973

THIS NOTICE MUST REMAIN POSTED THROUGHOUT THE NEGOTIATIONS COURSE  
IN PROGRESS AND MUST NOT BE ALTERED OR DEFACED OR COVERED BY ANY OTHER  
NOTICE.

1/18/73

UNIFIED SCHOOL DISTRICT NO. 1 OF RACINE COUNTY, WISCONSIN,  
XVIII Decision No. 113154B

MEMORANDUM ACCOMPANYING FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

The Complainant contends that the Respondent violated its duty to bargain collectively by taking unilateral action in a number of instances and that those violations, taken together with the other evidence, support a finding that the Respondent engaged in "surface bargaining" all in violation of Section 111.70(3)(a)4 and section 111.70(3)(a)1 of the Wisconsin Statutes. Specifically the Complainant contends that the Respondent violated its duty to bargain collectively by (1) unilaterally determining that any collective bargaining agreement reached after the expiration of the existing collective bargaining agreement would not be made retroactive, (2) unilaterally eliminating a provision providing for 100 minutes of planning time for elementary teachers, (3) unilaterally opening negotiations to certain members of the news media, and (4) unilaterally eliminating or changing numerous working conditions, which were set out in the collective bargaining agreement which expired on August 25, 1972 and were not in issue in the negotiations.

Retroactivity

The Respondent contends that, by indicating its intention to refuse to make any agreement reached after the expiration of the prior agreement retroactive, it acted to encourage early agreement rather than frustrate agreement as alleged and points out that the Respondent changed its position after the Commission's decision in the Racine County case<sup>1</sup> and before the collective bargaining agreement actually expired. After the contract expired the Complainant apparently asked for and was granted an unrestricted retroactivity clause.

The Examiner is satisfied that the Respondent did not violate its duty to bargain on the question of retroactivity under the circumstances present herein. Although the question of retroactivity is a mandatory subject of bargaining employers frequently take the position in bargaining that they will not grant retroactivity or that they will grant retroactivity only under certain circumstances, and the Complainant has not put forth any persuasive reason why this bargaining position should be condemned as a per se violation of the duty to bargain in good faith. There is no evidence that would support a finding that the Respondent took this position to prevent an agreement. In fact, the evidence would support the opposite conclusion.

The Complainant emphasizes the apparent finality of the position taken by the Respondent's Board of Education at its February 14, 1972 meeting in support of its argument that the Respondent refused to bargain collectively on a mandatory subject. As the Commission pointed out in the Racine County case, the existence of a county ordinance did not preclude the union from asking for retroactivity nor did it relieve the County of the duty to bargain on the question "for what the county enacted with respect to retroactivity it can repeal if it so desires."<sup>2</sup> In that case, the County had refused to bargain on the subject when it actually became an issue in negotiations. Here the Respondent not only bargained

1/ Racine County (Sheriff's Department), (10917-A, 10917-B) 6/72, 8/72. That decision held that the question of retroactivity is a mandatory subject of bargaining under the provisions of the Municipal Employment Relations Act.

2/ Ibid., (10917-B) 8/72 at p. 2.

on the subject but ultimately conceded the issue. The action taken by the Respondent herein with regard to its bargaining position on retroactivity did not, by itself, amount to a refusal to bargain on a mandatory subject.

Planning Time

The Complainant contends that by unilaterally eliminating certain busing operations which had been previously established pursuant to Section 121.54(9) of the Wisconsin Statutes /<sup>3</sup>/ the Respondent, in effect, eliminated the provision regarding planning time for elementary teachers. The Respondent argues that it had never obligated itself to provide such busing for the purposes of planning time and that the inference that the elimination of those busing operations had the effect of eliminating the elementary planning time provision is not justified on the facts presented.

The Examiner does not understand the Complainant's position to be that the decision of whether the Respondent should continue the busing operations in question was a mandatory subject of bargaining. On the other hand, the question of the impact that decision may have had on existing wages, hours, and working conditions was certainly negotiable. Although the decision was made prior to the expiration of the collective bargaining agreement, it was not scheduled to take effect until the following school year which was scheduled to begin after the expiration of the collective bargaining agreement. When the Complainant asked the Respondent to withhold action on the busing in question until the parties had an opportunity to discuss its impact on the planning time provision, the Respondent refused to withhold action as requested; but it did not refuse to discuss the impact that the decision may have had on working conditions. In a subsequent proposal, the Respondent proposed to eliminate the planning time provision. Although that proposal may be taken as an indication that the Respondent recognized that its change in busing policy did have an impact on the planning time provision, it is also an indication that the Respondent was willing to bargain about that impact even though its initial proposal was obviously not to the Complainant's liking. Again, the Respondent did bargain on the subject and the new collective bargaining agreement includes the same planning time language as the old one. 4/

Because the decision to eliminate the busing operations in question was not a subject that the Respondent was obligated to bargain about and because the Respondent did bargain about the impact that decision may have had on established working conditions, the Examiner is satisfied that the Respondent did not refuse to bargain collectively when it unilaterally eliminated the busing operations in question.

Opening Negotiations to the Press

The Complainant contends that the Respondent unilaterally opened negotiations to the press, but the Respondent denies that this is the case. A careful reading of the Negotiation Committee's report which was adopted by the Respondent's Board of Education at its August 14, 1972 meeting supports the Respondent's contention. In the second to the last paragraph:

3/ Section 121.54(9) provides for the establishment of a transportation plan where "unusual hazards" exist for students who live less than 2 miles from school.

4/ This fact alone would seem to belie the Complainant's claim that the Respondent's busing decision "eliminated" the planning time provision.

of that report, the Committee clearly stated that its recommendation was that the Respondent "offer" to open meetings to the press under specified conditions on a trial basis. Paragraph 5a of Article III of the collective bargaining agreement, which had not yet expired, contemplates possible agreement to open negotiations with the following language:

"Meetings will be held in private unless open meetings are mutually agreed upon." (Emphasis supplied.)

Again, the Complainant emphasizes the fact that this action was taken formally and publicly in support of its claim that the action constituted bad faith bargaining. The Examiner is satisfied that the Respondent's decision to offer to open negotiations to the press was not in conflict with the Respondent's duty to bargain about wages, hours and working conditions.<sup>5/</sup> The Complainant's claim that the Respondent's real purpose in making this offer was to "embarrass" the complainant will be discussed below under the discussion involving the allegation of "surface bargaining."

#### The Resolution of August 28, 1972

The Complainant contends that the resolution which the Respondent's Board of Education adopted on August 28, 1972 "drastically altered" the existing conditions of employment by "gutting" the provisions of the expired collective bargaining agreement. The Respondent contends that the action taken was merely for the purpose of establishing interim personnel policies, which action was necessitated by the expiration of the existing collective bargaining agreement and justified because of the existence of an impasse in bargaining. It also claims that no one actually suffered the loss of any benefits as a result of such action.

In the Examiner's view, an important part of the background in this case is the expectations which may have been created as a result of the Respondent's handling of a similar problem which occurred in the prior year's negotiations. In the negotiations leading up to the 1971-1972 collective bargaining agreement the parties were unable to reach agreement on the provisions to be contained in the new agreement prior to the expiration of the old agreement. The Respondent, by Board resolution, acted to continue all of the non-economic provisions of the prior collective bargaining agreement until such time as a new agreement was reached on the economic items to be included in the 1971-1972 collective bargaining agreement. According to the Respondent, its reason for taking this action was its recognition of the fact that final agreement on economic issues was not possible during Phase I of the federal government's efforts to regulate wages and prices. The Complainant does not deny that the wage and price control program was the reason for the Respondent's action in the prior negotiations.

Regardless of the reason which the Respondent may have had for extending the non-economic provisions of the expired collective bargaining agreement in the prior years negotiations, that action created an expectation on the part of the Complainant that only those personnel practices which were referred to in the resolution would be continued after the expiration of the agreement. When the Respondent adopted the resolution of

- 5/ Although the Complainant does not take a position on the question of whether such a proposal is a mandatory or permissive subject, it cites a Pennsylvania case which found it was not a mandatory subject PLRB v. Board of School Directors of Bethlehem Area School District 505 GERR, P.I. (1971). Since the Respondent did not insist on open meetings to the point of an impasse in this case, it is not necessary to find whether its proposal was a mandatory or permissive subject.

Having interpreted all working conditions established under the provisions of the above collective bargaining agreement which were not specifically mentioned in the resolution as indicated in the Complainant's letter on August 29, 1972, the Complainant's representatives were especially concerned about the resolution's failure to mention the grievance procedure or the planning time provision that were contained in the expired contract. Had the Respondent assured the Complainant's representatives that the resolution was not intended to eliminate any working conditions not in issue in negotiations and that the Complainant would be advised of any proposed changes in wages, hours or working conditions, the Examiner would be inclined to find that the action taken by the Respondent's Board of Education on August 28, 1972 did not constitute a unilateral change in working conditions. However, the Respondent's subsequent action made it clear that the Complainant's interpretation of its otherwise ambiguous action was correct.

By unilaterally adopting a grievance procedure which was different in some material respects from the prior grievance procedure, the Respondent changed a working condition which was not in issue in negotiations and confirmed the Complainant's suspicion that other working conditions not mentioned in the resolution were either abolished or in jeopardy. This is not to say that the agreement to arbitrate grievances was a "working condition" which the Respondent was bound to honor during the hiatus. There was no enforceable agreement on August 28, 1972 and the Respondent was clearly not bound on that date to arbitrate a grievance arising during the hiatus. Because the Respondent subsequently agreed to an unrestricted retroactivity clause it probably became bound thereafter to arbitrate grievances which arose during the hiatus. 6/

The Respondent attempts to justify its action as being necessitated by its reasonable belief in the existence of an impasse on August 28, 1972. The joint request for mediation and the exchange of "final offers" on August 24, 1972 lends considerable support to this claim. However, the Examiner sees no need to make a finding in this regard, because even if the Respondent was justified in believing that an impasse existed on that date, the Respondent's action was a per se violation of its duty to bargain before making unilateral changes in working conditions which were not even in issue in the negotiations.

#### Surface Bargaining

The Examiner is satisfied that the Respondent did not engage in "surface bargaining" as alleged by the Complainant. The only evidence adduced by the Complainant that would suggest the possibility that the Respondent was, contrary to its contention, seeking to avoid reaching an agreement was the fact that the Respondent adopted its retroactivity position, open meeting proposal and working conditions resolution in formal and public sessions.

As stated above, the bargaining position on retroactivity adopted by the Respondent was not illegal so long as it evinced a willingness to bargain and did bargain on the subject. This position, like the open meeting proposal which followed, could have been developed in executive session. The formal nature of both actions created a "commitment" to a position which was more likely to become known to the teachers represented by the Complainant because of the public nature of the meeting.

6/ Because it is unnecessary to a decision in this case the Examiner makes no finding in this regard.

The Complainant understands the Complainant's argument, i.e., is this aspect of the action taken which supports its claim that the Respondent manifested an intent to frustrate or avoid an agreement.

First of all, it should be observed that the Respondent's Board of Education, as a public body, would seem to be privileged, if not required by law, to formulate its bargaining position publicly when, in its judgment, the public ought to be advised of its proposed position in bargaining and the reasons therefore. Although some might question the advisability of such an approach to collective bargaining, it is not reasonable to infer on the record presented herein that its purpose for doing so was to frustrate agreement. As noted above, the motivation for the retroactivity resolution appears to have been to create a "meaningful deadline" and thereby encourage timely agreement. The stated purpose of the open meeting proposal was to afford the public a greater opportunity to become informed about the parties' respective positions at the bargaining table. This stated purpose is clearly not indicative of bad faith; however, the Complainant contends that the real purpose was to publicly "embarrass" the Complainant's representatives by making it appear that they were responsible for the exclusion of the press.

Although there is no evidence who initially proposed that negotiations be held in closed session, the Respondent agreed in writing to do so and indicated during the course of its deliberations on the resolution that it entertained serious reservations about holding negotiations in open meetings. If the resolution and what transpired thereafter made it appear that the Complainant was responsible for the continued exclusion of the press, the Complainant was free to attempt to explain away that appearance to the extent that it was not justified by the facts..

The Complainant puts forth no persuasive reason why such an appeal for public support should constitute bad faith bargaining in the public sector. In addition to the rules of "economic warfare" which public employees and public employers have imported from the private sector, there are, what might be termed the rules of "political warfare" which obtain in public sector bargaining. Either party ought to be free to employ those tactics either economic or political which are not illegal in their efforts to bring pressure on the other party to agree to the terms proposed.<sup>7</sup> The Commission ought not attempt to outlaw the use of otherwise legal pressure devices brought to bear in an effort to reach agreement on the most favorable terms under the guise of defining the duty to bargain in good faith. The Respondent did not insist to the point of an impasse that negotiations be held in public, and their proposal in that regard, even though it may have tended to "embarrass" the Complainant, was not a violation of its duty to bargain in good faith.

Finally, the action taken by the Respondent's Board of Education at its August 29, 1972 meeting wherein it established those personnel policies to be followed in the absence of a collective bargaining agreement is not evidence which would support a finding that it was engaged in an effort to avoid agreement. Although that action, to the extent that it eliminated working conditions which were not in issue in bargaining, did constitute a per se violation of its duty to bargain in good faith about mandatory subjects, the apparent purpose of such action was to convince the Complainant and those employees represented by it, albeit through an illegal act, that they should come to agreement on the terms of a new collective bargaining agreement. Although

<sup>7</sup> See West Bend Joint School District No. 1 (7938-A) 4/68; City of Madison (9582-B, 9582-C) 7/71; Ct. Janesville Board of Education (8791-A) 3/69.

AN APPRAISEMENT OF THE STATE OF CONGREGATIONALISM IN THE UNITED STATES  
IN 1850. WITH A HISTORY OF THE CONGREGATIONAL CHURCHES OF NEW YORK,  
NEW JERSEY, PENNSYLVANIA, AND CONNECTICUT, AND OF THE CONGREGATIONAL  
CHURCHES OF THE STATE OF MASSACHUSETTS.

BY  
GEORGE R. FLEISCHER,  
WISCONSIN IMPROVEMENTS CONSULTANT.

1851.  
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